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**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:)	
)	File No.: ACO-NE-14-4001
)	
Sandbanks, LLC)	FMF No.: 296976
)	152 Stedman Street
<i>(former Glenview Sand and Gravel Property)</i>)	Chelmsford, Massachusetts
)	

**ADMINISTRATIVE CONSENT ORDER
AND
NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

1. The Department of Environmental Protection (“Department” or “MassDEP”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Northeast Regional Office located at 205B Lowell Street, Wilmington, Massachusetts 01887.
2. Sandbanks, LLC (“Sandbanks” or “Respondent”) is a Massachusetts limited liability corporation with its principal address at 19 Cedar Street, Wilmington, Massachusetts 01887. Respondent’s mailing address for purposes of this Consent Order is the same as above.
3. MassDEP is responsible for the implementation and enforcement of: M.G.L. c. 111, §§ 150A and 150A1/2, the Solid Waste Management Regulations at 310 CMR 19.000, and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

II. STATEMENT OF FACTS AND LAW

4. Respondent acquired the title to the property formerly known as Glenview Sand and Gravel (“Glenview,” the “Site” or the “Landfill”) pursuant to a Sheriff’s Deed recorded on April 4, 2011, in Book 24889 on Page 280 (“Sheriff’s Deed”) and a Deed dated April 4, 2011 and recorded with the Middlesex North Registry of Deeds at Book 24890, page 37 (“April Deed”).
5. The following facts and allegations have led MassDEP to issue this Consent Order:
 - A. Glenview is an area of land located in Chelmsford, Massachusetts that has been in operation since the 1920’s primarily for the excavation of sand and gravel. Over the course of many decades, Glenview also was used for the deposition of solid waste materials.

- B. On or around 1997, Perry Kasner, trustee of Glenview Realty Trust, acquired the property and Mass Gravel, Inc. (“MGI”) entered into an Administrative Consent Order, ACO-NE-97-4002, (the “1997 Consent Order”) in order to perform landfill closure for the solid waste area at Glenview. The 1997 Consent Order required MGI, among other things, to comply with the landfill assessment and closure design procedures set forth in 310 CMR 19.000 and to perform landfill closure design and landfill closure in accordance with a schedule set forth therein. The 1997 Consent Order also required MGI to complete capping and closure of Glenview by November 1, 2000, or within twelve (12) months after the approved closure grade shown on an approved final closure plan was reached, whichever was earlier. Despite several amendments to the 1997 Consent Order, MGI failed to complete the assessment and closure of the Landfill.
- C. On or around October 24, 2002, MassDEP executed an Administrative Consent Order with Penalty, ACOP-NE-02-4003 (the “2002 Consent Order”), with Amalgamated Transportation, Inc. (“ATI”) for failure to meet certain solid waste activity deadlines in the 1997 Consent Order¹ including, but not limited to a comprehensive site assessment (“CSA”) pursuant to 310 CMR 19.150 and completion of the Landfill closure in accordance with the Corrective Action Design (“CAD”) as approved by MassDEP pursuant to 310 CMR 19.151(3). The 2002 Consent Order required ATI to complete the closure of the landfill by December 30, 2002, and provided that, if ATI could not grow vegetation at the Site by that date using its best efforts, then ATI would stabilize the cover and complete the growth of vegetation by April 30, 2003. Despite extending the deadline to September 15, 2003 for cap completion and October 31, 2003 for vegetation growth, ATI failed to meet these deadlines.
- D. On August 2, 2004, ATI’s consultants submitted the results of additional investigations conducted at the Site as required by a Supplemental Comprehensive Site Assessment (“SCSA”) Scope of Work (“SOW”) approved by MassDEP on April 15, 2003. The work, as approved by MassDEP, required, without limitation:
 - a. The installation and sampling of four micro-wells;
 - b. The measurement of stream elevations to determine the discharge characteristics of the aquifer;
 - c. The collection and analysis of groundwater samples quarterly;
 - d. The preparation of a risk assessment; and
 - e. Preparation and submittal to MassDEP of a report presenting the results of the investigations, including the risk assessment and a proposal for additional investigations, if needed.

The required groundwater sampling was not conducted nor was the risk assessment or report submitted to MassDEP.

- E. During several inspections throughout 2005 and 2006, MassDEP personnel observed, without limitation, that:
 - a. Placement of the flexible membrane liner (“FML”) over the landfill had been completed;
 - b. Approximately 2/3 of the FML was exposed and uncovered;

¹ ATI as the successor to MGI at the Landfill was responsible for compliance with the 1997 Consent Order.

- c. Sand that had been previously placed on the FML and subsequently eroded was present in the storm water basin; and
 - d. No construction equipment or personnel were present at the Site.
 - F. On March 21, 2006, Julie Foshay was found to have a 1/8th beneficial interest in the Site by the Middlesex Superior Court, Civil Action No. 1999-1554, said interest being held by her as a beneficiary of The Coughlin Massachusetts Nominee Trust. On June 13, 2008, a judgment was awarded to Julie Foshay against MGI, ATI and Patrick Hannon.
 - G. Throughout 2009 and 2012, MassDEP met numerous times with representatives of Julie Foshay and ATI, Patrick Hannon, to resolve the outstanding capping and closure issues at Glenview. As of the date of this Order the closure and comprehensive site assessment of the Landfill has not been completed by ATI, Patrick Hannon.
 - H. On September 16, 2010, MassDEP received an anonymous report that a fire had occurred at the landfill earlier in September and damaged the exposed FML cap on the landfill. In response to the anonymous report, MassDEP inspected the landfill on September 20, 2010, and observed, without limitation:
 - a. Exposed FML on the majority of the eastern side slope extending to a small portion of the top plateau, an area of approximately 2 acres, had been damaged by fire;
 - b. Exposed FML undamaged by the fire had been sliced/separated exposing the underlying soil; and
 - c. Other areas of exposed FML had been damaged by off-road vehicles including penetrations of the FML.
 - I. On November 3, 2010, MassDEP personnel inspected the landfill again with representatives of the Town of Chelmsford Health Department, and the Chelmsford Water District and observed, without limitation, that since the previous inspection a tear approximately 500 feet in length extending from approximately the top of the eastern slope westward on the top of the Landfill in the center of the exposed FML and a tear to the south of the above area exposing an area of approximately 100 by 150 feet of the underlying soil had occurred. The tears increased the area of exposed soil beneath the FML from the previous 2 acres to approximately 3.5 acres.
 - J. Charter Environmental Inc. ("Charter") is a Massachusetts limited liability corporation with its principal offices located at 560 Harrison Avenue, Boston, Massachusetts 02118. Charter is an environmental contracting services and waste management company.
 - K. On July 16, 2013, Respondent signed an agreement with Charter to complete the final closure and CSA of the Landfill. The agreement does not provide for Charter to perform post-closure maintenance and monitoring of the Landfill or to perform corrective actions beyond those necessary to complete the closure of the Landfill pursuant to the Corrective Action Design required by the Order executed between Charter and MassDEP, ACO-NE-14-4002 (the "Charter Consent Order"). As owner of the facility Sandbanks retains ultimate responsibility for complying with the requirements of 310 CMR 19.000 including, but not limited to, the closure and post closure monitoring and maintenance of the facility.
6. The following additional facts and allegations have led MassDEP to issue this Consent Order:

SOLID WASTE

- A. The Landfill has not been closed in compliance with 310 CMR 19.000 including, without limitation, the Corrective Action Design approved by MassDEP on March 13, 1998 ("1998 CAD").
- B. The comprehensive site assessment of the Landfill has not been completed pursuant to 310 CMR 19.150 including, but not limited to, the assessment of the rate and extent of the cyanide contamination in the southern area of the property and the potential impact, if any, on the Chelmsford Water District water supply wells located approximately two thousand (2000) feet southeast of the Landfill.
- C. On April 4, 2011, Respondent, whose manager is Julie Foshay, acquired The Coughlin Massachusetts Nominee Trust's, MGI's, ATI's and the other defendants' interest in the title to Glenview through the Sheriff's Deed and the April Deed. Upon that date Respondent became the owner of Glenview and as such, became responsible for the Landfill pursuant to 310 CMR 19.000. In addition, on that date as the successor to MGI and ATI, Respondent became responsible for compliance with the previous Administrative Consent Orders executed by MGI and ATI with the Department for the comprehensive site assessment, closure, and post-closure care and monitoring of the Landfill pursuant to 310 CMR 19.000.

D. 310 CMR 19.006 Definitions

The regulation reads in relevant portion

Owner means any person who alone or in conjunction with others has legal ownership, a leasehold interest, or effective control over such property interests, the real property upon which a facility is located, or the airspace above said real property; "owner" does not mean persons holding bare legal title for the purpose of providing security for financing.

E. 310 CMR 19.015 Compliance

The regulation states:

No person shall construct, modify, operate or maintain a facility except in compliance with a site assignment, permit or plan approved by the board of health or the Department, as applicable, and any authorizations issued by the Department and all conditions included in a permit, approval or authorization for said facility.

F. 310 CMR 19.043(5)(a) Duty to Comply

The regulation states:

The permittee shall comply at all times with the terms and conditions of the permit or approval, 310 CMR 19.000, M.G.L.c. 111, § 15A and all other applicable state and federal regulations.

G. 19.045: Facility Closure and Post-closure

The regulation states:

(1) General. Any facility that stops accepting solid waste voluntarily or in accordance with any permit, authorization or order issued by the Department or a court of competent jurisdiction or under any other circumstances shall comply with the requirements of 310 CMR 19.045.

(2) Notification of Voluntary Closure. The owner and/or operator shall notify the Department no later than six months prior to the date that the facility will stop accepting solid waste.

(3) Compliance with Regulations. Closure activities shall be carried out in compliance with all applicable regulations and the permit. Landfills shall meet the specific closure requirements established at 310 CMR 19.140: Landfill Closure Requirements.

(4) Completion of Closure. A facility shall be deemed closed on the date of the Department's written determination that the closure of the facility has been completed in accordance with the final closure/post-closure plan.

H. 19.051: Financial Assurance Requirements

The regulation reads in relevant portions:

(1) Applicability. The provisions of 310 CMR 19.051 apply to:

(a) landfills; and

(2) Financial Responsibility for Closure, Post-Closure and Corrective Action.

(a) The owner or operator of a facility identified in 310 CMR 19.051(1) shall establish or obtain, and continuously maintain, financial assurance that is adequate to assure the Department that the owner or operator is at all times financially capable of complying with the provisions of 310 CMR 19.00 governing the closure of the facility and its post-closure maintenance.

I. 19.140: Landfill Closure Requirements

The regulation reads in part:

(1) General. Any facility that must stop accepting solid waste in accordance with 310 CMR 19.000, any permit, authorization or order issued by the Department or a court of competent jurisdiction or under any other circumstances shall comply with the requirements of 310 CMR 19.140.

J. 19.141: Record Notice of Landfill Operation

The regulation reads in part:

(1) Notification that a landfill has been operated on a site shall be recorded in the registry of deeds or in the registry section of the land court for the district wherein the landfill lies in

accordance with c. 111, § 150A. The notification shall be captioned "Record Notice of Landfill Operation c. 111, § 150A, 310 CMR 19.141 and contain the following:

K. 19.142: Landfill Post-closure Requirements

(1) General. The owner, successors or assigns shall maintain, care for and monitor the site during the post-closure period in order to ensure the integrity of the closure measures and to detect and prevent any adverse impacts of the site on public health, safety or the environment.

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III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

7. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

8. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

9. Respondent shall perform the following actions:

- A. Upon the effective date of this Consent Order, Respondent shall comply with the requirements of 310 CMR 19.000, the Massachusetts Solid Waste Regulations, including, but not limited to the provisions cited in Paragraph 6, above of this Consent Order.
- B. Upon the effective date of this Consent Order, Respondent shall institute and perform the measures necessary to stabilize the drainage layer and vegetative layer and protect the FML pending completion of the final landfill cap system including, but not limited to, a Storm Water Pollution Prevention Plan (SWPPP). MassDEP acknowledges that Charter and the Respondent have agreed that Charter shall be responsible for the work described in this Paragraph. Respondent acknowledges that if Charter fails to perform such work, Respondent shall remain liable to perform such work.
- C. Upon the effective date of this Consent Order, Respondent shall implement all measures necessary to control and prevent the generation and emission of dust wherever and whenever necessary at the Landfill, the access road, and any other areas related to or under control of Respondent to prevent nuisance conditions and/or fugitive dust emissions. Water shall not be used for dust control in amounts that produce excessive infiltration, ponding, runoff or erosion. MassDEP acknowledges that Charter and the Respondent have agreed that Charter shall be responsible for the work described in this Paragraph 8.C. Respondent acknowledges that if Charter fails to perform such work, Respondent shall remain liable to perform such work.

- D. Respondent shall assure that Charter complies with the requirements of the Charter Consent Order, ACO-NE-14-4002, for completing the closure and comprehensive site assessment of the Landfill.
- E. Respondent shall assure that all engineering work performed at the Landfill shall be under the general direction and supervision of a qualified independent professional engineer (the "Engineer of Record") registered in Massachusetts with experience in solid waste management and design. Any contractual relationship between Respondent and the engineer for work required hereunder shall require the engineer, as a condition of the contract, to implement work consistent with the provisions of this Consent Order and all submittals required by this Consent Order shall be certified by Respondent and the Engineer of Record in compliance with 310 CMR 19.011.
- F. No later than the earlier of February 1, 2017, or the date of Charter's submittal to MassDEP of the Closure Certification Report pursuant to the Charter Consent Order, Respondent shall submit to MassDEP:
 - a. A cost estimate and proposed financial assurance mechanism pursuant to 310 CMR 19.051 Financial Assurance Requirements for complying with the post-closure requirements of 310 CMR 19.142 Post-Closure Requirements at the Landfill; and
 - b. Documentation that the Record Notice of Landfill Operation has been filed recorded at the Middlesex County registry of deeds pursuant to 310 CMR 19.141 Record of Landfill Operation.
- G. In the event that Respondent claims the inability to fund the activities necessary to comply with 310 CMR 19.000 at the Landfill including, but not limited to post-closure maintenance and monitoring pursuant to 310 CMR 19.142, in part or in whole, Respondent shall within thirty (30) days of receiving a written request from MassDEP provide MassDEP with such financial information as MassDEP deems necessary to evaluate such claim of financial inability including, but not limited to then current statement of assets and liabilities of Sandbanks.
- H. Respondent shall provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times and without notice to the Landfill for purposes of conducting any activity related to its oversight of this Consent Order including without limitation to conduct inspections, take air quality readings, collect environmental samples, collect samples of shaping and grading material, or other samples. In addition, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at any time and without notice to the Landfill in response to complaint of odors or emissions from the Landfill. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.
- I. Respondent shall maintain and make available to MassDEP, and MassDEP's employees, representatives and contractors, access to records documenting the activities at the Landfill that shall include without limitation records on the shaping and grading material received at the Landfill including without limitation 21E Bill of Ladings, Material Shipping Records, and supporting reports and analytical data and the Monthly Reports, Engineer's Reports and Daily Logs required by this Consent Order. Respondent shall also ensure that a copy of the health

and safety plan and documentation that site personnel have been trained pursuant to the health and safety plan is maintained at the Site and available to MassDEP upon request.

10. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

John Carrigan, Solid Waste Section Chief
MassDEP-Northeast Regional Office
Bureau of Waste Prevention
205B Lowell Street
Wilmington, MA 01887

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

11. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

12. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

13. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

14. This Consent Order may be modified only by written agreement of the parties hereto.

15. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

16. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

17. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

18. This Consent Order shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's members, managers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

19. In addition to the penalty set forth in this Consent Order (including any suspended penalty), if Respondent violates either any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000.00 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

20. Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, Respondent shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Consent Order, and the Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, Massachusetts 02241-3982

In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys'

fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

21. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

23. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

24. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

25. This Consent Order shall become effective on the date that it is executed by MassDEP.

Consented To:
SANDBANKS, LLC

By: _____
Julie Foshay, Manager
19 Cedar Street
Wilmington, MA 01887
Federal Employer Identification No.:

Date:_____

Issued By:
DEPARTMENT OF ENVIRONMENTAL PROTECTION

*This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.*

By: _____
Eric Worrall, Acting Regional Director
MassDEP – Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts 01887

Date:_____